IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION LD.NO.2683 OF 2004

Commander Ashok G. Gandhi. ... Petitioner.

Vs.

Unuion of India & Ors. ...Respondents.

....

Mr. Shyam Mehta i/b.Mr. Satendra Kumar for the Petitioner.
Ms.Deepa Chavan with Mr. R.C. Master for the Respondents.

.....

CORAM : DALVEER BHANDARI, CJ &
DR. D.Y. CHANDRACHUD, J.

October 4, 2004.

P.C.:

The petitioner has filed this petition with the prayer that the Court be pleased to call for the record and proceedings of the enquiry proceedings and upon examining the legality and propriety of the order of the investigation be pleased to quash and set aside the investigation report and chargesheet. The learned counsel appearing for the petitioner does not press this prayer. The only prayer which he has pressed is that in case in the Court Martial proceedings he is held to be guilty and of imprisonment sentence is imposed on him, then in that eventuality, the sentence be not executed for a period of 12 weeks from the day of the copies of the Court Martial proceedings are duly served upon the petitioner. The

learned counsel appearing for the respondents has drawn our attention to the Navy (Discipline and Miscellaneous Provisions) Regulations, 1965. Regulation 194 reads as under :

> "194. Execution of Sentence: (1) It shall be the responsibility of the convening authority to take necessary steps to give effect to the sentence.
>
> (2) The convening authority shall not give effect to a sentence if he considers that an error has occurred in the conduct of the court-martial calculated, in his opinion, to invalidate the finding of the court-martial and if he doubts the correctness of the finding in fact or in law or the legality or the propriety of the sentence, he shall not put the sentence into effect until a decision has been obtained from the Chief of the Naval Staff.
>
> (3) Where an officer is sentenced to imprisonment, the convening authority shall not put the sentence into effect until he has communicated with and received the directions of the Chief of the Naval staff."

According to clause (3) of Regulation 194 where an officer is sentenced to imprisonment, the convening authority shall not put the sentence into effect until orders are received of the Chief of the Naval Staff and this process ordinarily takes some time before the order is passed by the Chief of the Naval Staff. During the interregnum period, the petitioner if aggrieved by the order can always challenge the same.

In the instant case, the Court Martial proceedings have yet not been initiated. Therefore, we do not think it appropriate to pass any order at this stage. The Court Martial proceedings are going to take place on 7th October 2004.

The petitioner has drawn our attention to the Division Bench order dated 26th June 2002 (Criminal Writ Petition No.797 of 2002). This order is clearly of no avail to the petitioner because the order was passed on the agreement of the parties.

On the consideration of the totality of the facts and circumstances of the case, we are not inclined to interfere at this stage. The petition being devoid of any merit, is accordingly dismissed.

CHIEF JUSTICE.

DR. D.Y. CHANDRACHUD, J.